

### **REMARKS**

Entry of the foregoing amendments is respectfully requested. Claims 1, 21 and 24 have been amended. Claims 2-11, 18, 19 and 25 have been canceled. New claims 26-31 have been added. Claims 1, 12-17, 20-24 and 26-31 are currently pending in the application. Favorable reconsideration and allowance of this application is respectfully requested in light of the foregoing amendments and the remarks that follow.

#### **1. Objections To The Specification**

In the Office Action, the Examiner objected to the specification as not including the current status or the correct serial number of the patent application.

Applicant respectfully traverses the Examiner's objection to the specification. More specifically, with this response, applicant has amended the first paragraph of the application to specify the current status of the parent application and the correct serial number of the parent application. The Examiner's careful review is noted with appreciation.

#### **2. Claim Rejections**

##### **a) Double Patenting**

In the Office Action, the Examiner has rejected claims 1 and 12-25 on the grounds of non-statutory obviousness type double patenting over claims 1-9 of Ludwig U.S. Patent No. 6,730,341 (the '341 patent) in light of Ludwig U.S. Patent No. 5,564,332 (the '332 patent).

Applicant respectfully traverses the Examiner's double patenting rejection of claims 1 and 12-25. More specifically, with this response applicant submits a Terminal Disclaimer signed by applicant's attorney disclaiming the term of any patent issued from this application that extends beyond the term of the '341 patent.

As a result of the Terminal Disclaimer, applicant respectfully requests that the Examiner withdraw the double patenting rejection of claims 1 and 12-25.

##### **b) 35 U.S.C. §112, First Paragraph**

###### **i. Claim 24**

In the Office Action, the Examiner has rejected claim 24 as failing to comply with the written description requirement.

Applicant respectfully traverses the Examiner's rejection of claim 24. More specifically, with this response applicant has amended claim 24 to specify that the bodies of meat are maintained at the temperature of between 43°F to 60°F. Further, contrary to the Examiner's statement that this range does not refer to the temperature of the meat, on page 4, lines 16-19, the second step of the recited method involves "heating the bodies of meat...to a predetermined elevated temperature and maintaining the temperature substantially constant." The elevated temperature range is specified on page 5, lines 11-12 as being between 45°F to 60°F, with the temperature in this range being controlled to within  $\pm 2$  °F, as stated on page 5, lines 22-24 of the specification. Thus, the application clearly provides a written description of the elevated temperature being applied to the meat and that the elevated temperature can be between 43°F to 60°F as a result of the disclosed temperature range and the  $\pm 2$  °F temperature control range specified for the method.

As a result, the subject matter of claim 24 is adequately described in the specification, and applicant requests that the Examiner withdraw the rejection of claim 24.

ii. Claim 25

In the Office Action, the Examiner has rejected claim 25 as failing to comply with the written description requirement.

With this response, applicant has canceled claim 25, rendering the Examiner's rejection of claim 25 moot. As a result, applicant requests that the Examiner withdraw the rejection to claim 25.

iii. Claim 13

In the Office Action, the Examiner has rejected claim 13 as failing to comply with the written description requirement.

Applicant respectfully traverses the Examiner's rejection of claim 13. More specifically, contrary to the Examiner's statement that the application does not disclose a "substantially constant" temperature, on page 4, lines 16-19, the second step of the recited method involves "heating the bodies of meat...to a predetermined elevated temperature and maintaining the temperature substantially constant." The elevated temperature range is specified on page 5, lines

11-12 as being between 45°F to 60°F, with the temperature in this range being controlled to within  $\pm 2$  °F, as stated on page 5, lines 22-24 of the specification. Thus, the application clearly provides a written description for the “substantially constant” temperature applied to the meat as the elevated temperature is clearly disclosed as being between 43°F to 60°F, and that the temperature in this range is controlled to within  $\pm 2$  °F.

As a result, the subject matter of claim 13 is adequately described in the specification, and applicant requests that the Examiner withdraw the rejection of claim 13.

c) 35 U.S.C. §112, Second Paragraph

i. Claims 1 and 24-25

In the Office Action, the Examiner rejected claims 1 and 24-25 as being indefinite for not providing an adequate definition of what material is “at an elevated temperature of 45°F to 60°F” or for the term “substantially dry”.

Applicant respectfully traverses the Examiner’s rejection to claim 1 and 24-25. More specifically, with this response applicant has amended claims 1 and 24 to specify that the elevated temperature refers to the bodies of meat. Also, claim 25 has been canceled so the rejection of this claim has been rendered moot.

In addition, on page 2, lines 16-20 of the specification it is stated that a relatively dry state for the meat product is where “the marinade or treating solution is fully taken up within the body of the meat, leaving the surface free from or practically free from a liquid film.” Therefore, this description in the specification provides a more than adequate definition for the term “substantially dry” recited in each of claims 1 and 24, such that these claims are definite for this reason as well.

As a result, the subject matter of claims 1 and 24 is adequately described in the specification, and applicant requests that the Examiner withdraw the rejection of claims 1 and 24.

ii. Claim 12

In the Office Action, the Examiner has also rejected claim 12 as being indefinite for failing to adequately describe the temperature range referred to in the claim.

Applicant respectfully traverses the Examiner's rejection of claim 12. More specifically, as discussed previously regarding the rejection of claim 1, from which claim 12 depends, claim 1 has been amended to specify that the bodies of meat are maintained at a temperature within the elevated temperature range. Therefore, the controlling step of claim 12 refers to the range specified in claim 1 of between 45°F to 60°F, and is definite.

As a result, the subject matter of claim 12 is adequately described in the specification, and applicant requests that the Examiner withdraw the rejection of claim 12.

iii. Claim 13

In the Office Action, the Examiner has also rejected claim 13 as being indefinite for failing to adequately describe the meaning of the term "substantially constant."

Applicant respectfully traverses the Examiner's rejection of claim 13. More specifically, as stated previously, contrary to the Examiner's statement that the application does not disclose a "substantially constant" temperature, on page 4, lines 16-19, the second step of the recited method involves "heating the bodies of meat...to a predetermined elevated temperature and maintaining the temperature substantially constant." The elevated temperature range is specified on page 5, lines 11-12 as being between 45°F to 60°F, with the temperature in this range being controlled to within  $\pm 2$  °F, as stated on page 5, lines 22-24 of the specification. Thus, the application clearly provides a written description for the "substantially constant" temperature applied to the meat as the elevated temperature is clearly disclosed as being between 43°F to 60°F, and that the temperature in this range is controlled to within  $\pm 2$  °F.

As a result, the subject matter of claim 13 is adequately defined, and applicant requests that the Examiner withdraw the rejection of claim 13.

d) 35 U.S.C. §102(e)

In the Office Action the Examiner has rejected claims 1 and 23-25 as being anticipated by Horn et al. U.S. Patent No. 6,105,490 (the '490 patent).

Applicant respectfully traverses the Examiner's rejections of claims 1 and 23-25. More specifically, with this response applicant has amended each of claims 1 and 24 to specify that the claimed method includes the steps of contacting bodies of meat with a treating solution, agitating

said bodies of meat in contact with said treatment solution to maintain the bodies of meat at an elevated temperature until said bodies of meat are substantially dry, and recovering said bodies of meat in a substantially dry state, wherein the step of recovering the bodies of meat comprises cooling the bodies of meat while agitating the bodies of meat.

In contrast, the '490 patent discloses a process for marinating meat products by placing the meat product within a vessel 12 along with a liquid marinade solution. ('490 patent, Col. 3, lines 63-65) The operation of the vessel 12 serves to massage the meat product to massage air out of the meat product and the liquid marinade into the meat product. However, nowhere in the '490 patent is the step of agitating the meat products until they are substantially dry, nor is recovering the meat products in this substantially dry state disclosed, as required by claims 1 and 24, such that these steps cannot be anticipated by the '490 patent.

As a result, the subject matter of claims 1, 23 and 24 is neither shown nor suggested by the '490 patent, such that these claims are allowable, and applicant therefore respectfully requests that the Examiner withdraw the rejections of these claims.

e) 35 U.S.C. §102(b)

i. Claim 25

In the Office Action, the Examiner has rejected claim 25 as being anticipated by Lankford U.S. Patent No. 3,718,485 (the '485 patent).

Applicant respectfully traverses the Examiner's rejections of claim 25. More specifically, with this response applicant has canceled claim 25, rendering the rejection of this claim moot.

ii. Claims 1, 18-19 and 23-25

In the Office Action, the Examiner has rejected claims 1, 18-19 and 23-25 as being anticipated by Halden et al. U.S. Patent No. 5,158,794 (the '794 patent).

Applicant respectfully traverses the Examiner's rejections of claims 1, 18-19 and 23-25. More specifically, with this response applicant has amended each of claims 1 and 24 to specify that the claimed method includes the steps of contacting bodies of meat with a treating solution, agitating said bodies of meat in contact with said treatment solution to maintain the bodies of

meat at an elevated temperature until said bodies of meat are substantially dry, and recovering said bodies of meat in a substantially dry state, wherein the step of recovering the bodies of meat comprises cooling the bodies of meat while agitating the bodies of meat.

In contrast, the '794 patent discloses a method of marinating meat in which the meat product is tumbled in the marination medium, such that there is no disclosure that the meat product is recovered in a substantially dry state, as required by claims 1 and 24. In addition, claims 1 and 24 require that the meat product be heated during agitation to the elevated temperature, and then cooled while also being agitated to recover the substantially dry meat products. However, the '794 patent does not disclose any step of cooling of the meat product while agitated, only that the products can be frozen after cooking, where the cooking takes place after the tumbling as correctly indicated by the Examiner in the Office Action, such that the freezing does not take place simultaneously with agitation, which is in contrast to the express limitations of claims 1 and 24.

As a result, the subject matter of claims 1 and 24 is neither shown nor described by the '794 patent, such that these claims, and claims 18, 19 and 23 which depend from claim 1, are allowable, and applicant therefore respectfully requests that the Examiner withdraw the rejections of these claims.

f) 35 U.S.C. §103(a)

i. Claims 1, 12-14, 19 and 21-22

In the Office Action the Examiner has rejected claims 1, 12-14, 19 and 21-22 as being unpatentable over the '794 patent.

Applicant respectfully traverses the Examiner's rejections of claims 1, 12-14, 19 and 21-22. More specifically, as stated previously, with this response applicant has amended each of claims 1 and 24 to specify that the claimed method includes the steps of contacting bodies of meat with a treating solution, agitating said bodies of meat in contact with said treatment solution to maintain the bodies of meat at an elevated temperature until said bodies of meat are substantially dry, and recovering said bodies of meat in a substantially dry state, wherein the step

of recovering the bodies of meat comprises cooling the bodies of meat while agitating the bodies of meat.

In contrast, the '794 patent discloses a method of marinating meat in which the meat product is tumbled in the marination medium, such that there is no disclosure or suggestion that the meat product is recovered in a substantially dry state, as required by claim 1. In addition, claim 1 requires that the meat product be heated during agitation to the elevated temperature, and then cooled while also being agitated to recover the substantially dry meat products. However, the '794 patent does not disclose any steps of heating the meat product during agitation to an elevated temperature. The '794 patent also does not disclose the step of subsequently cooling of the meat product while agitated, the '794 patent stating only that the products can be frozen after cooking, where the cooking takes place after the tumbling as correctly indicated by the Examiner in the Office Action, such that the freezing does not take place simultaneously with agitation, in contrast to the express limitations of claim 1.

As a result, the subject matter of claim 1 is neither shown nor suggested by the '794 patent, such that claim 1, and claims 12-14, 19 and 21-22 which depend from claim 1, are allowable, and applicant therefore respectfully requests that the Examiner withdraw the rejections of these claims.

ii. Claims 15-17

In the Office Action the Examiner has rejected claims 15-17 as being unpatentable over the '794 patent in light of the '490 patent and further in view of German Reference No. DE 3119496A (the '496 reference).

Applicant respectfully traverses the Examiner's rejections of claims 15-17. More specifically, because each of claims 15-17 depends from and includes the subject matter of claim 1, as stated previously, with this response applicant has amended each of claims 1 and 24 to specify that the claimed method includes the steps of contacting bodies of meat with a treating solution, agitating said bodies of meat in contact with said treatment solution to maintain the bodies of meat at an elevated temperature until said bodies of meat are substantially dry, and

recovering said bodies of meat in a substantially dry state, where the step of recovering the bodies of meat comprises cooling the bodies of meat while agitating the bodies of meat.

In contrast, as also stated previously, the '794 patent does not show or suggest that the meat product is recovered in a substantially dry state, as required by claim 1. In addition, the '794 patent does not disclose or suggest any step of heating the meat during the agitation of the meat, or of cooling of the meat product while agitated, as required by claim 1.

The '490 patent is unable to cure this deficiency. More particularly, as cited by the Examiner in the Office Action, the '490 patent discloses the loading of shrimp into the apparatus in which the shrimp is preheated to a starting temperature of 60°F outside of the apparatus, and that the apparatus for marinating the shrimp cools the shrimp by 20°F to 26°F as a result of its operation. However, there is no suggestion of heating the shrimp within the apparatus, as required by claim 1, and this step is expressly taught away from by the '490 patent which states that one of the primary focuses of the apparatus is to effectively chill the product being marinated within the apparatus and to avoid the problems associated with inadvertently heating the meat products during agitation. ('490 patent, Col. 2, lines 5-22)

Further, the '496 reference discloses only a meat thermometer to be utilized in determining the temperature of the interior of a meat product, without any reference to an apparatus or method for marinating the meat product, much less for heating the meat while being agitated, and subsequently cooling the meat being agitated, as required by claim 1.

As a result, the subject matter of claim 1 is neither shown nor suggested by the combination of the '794 patent, the '490 patent and the '496 reference, such that claim 1, and claims 15-17 which depend from claim 1, are allowable. Applicant therefore respectfully requests that the Examiner withdraw the rejections of these claims.

iii. Claim 20

In the Office Action, the Examiner has rejected claim 20 as being unpatentable over the '794 patent in light of the '490 patent.

Applicant respectfully traverses the Examiner's rejections of claim 20. More specifically, because claim 20 depends from and includes the subject matter of claim 1, and the



combination of the '794 patent and the '490 patent does not show or suggest the subject matter of claim 1, as discussed previously regarding the rejections of claims 15-17, claim 20 is also allowable based on its dependency from claim 1. Applicant therefore respectfully requests that the Examiner withdraw the rejection of claim 20.

#### **4. New Claims 26-31**

With this response applicant has also added new claims 26-31. Claims 26-27 and 28 depend from independent claims 1 and 24, respectively, and further modify the methods in those claims by reciting that the step of cooling the bodies of meat comprises reducing the temperature of the bodies of meat to a temperature substantially below, and preferably 15°F to 40°F below, the elevated temperature. Thus, because these claims depend from claims that are allowable in light of the cited prior art, these claims are allowable as well.

Claim 29 is a new independent claim that covers a method of processing meat comprising the steps of: a) contacting bodies of meat originally presented at a low temperature with a treating solution; b) massaging said bodies of meat in contact with said treating solution at a predetermined elevated temperature above said low temperature and maintaining said elevated temperature substantially constant while agitating said meat for a period of time sufficient to distribute the treating solution in the meat in a treating vessel and substantially to dryness whereby the treating solution is incorporated in the bodies of meat; c) thereafter cooling the bodies of meat in the treating vessel; and d) recovering said bodies of meat in a cooled state below said elevated temperature, substantially dry and with the treating solution incorporated therein.

This claim is similar to issued independent claim 1 in co-owned Ludwig U.S. Patent No. 6,730,341, with the essential difference that the steps in claim 1 of the '341 patent of massaging the bodies of meat at the elevated temperature in the first vessel and cooling the bodies of meat in a second vessel are combined into a single vessel in claim 29 of the present application. Therefore, because the issued claim discloses the process occurring in two vessels, and the method of claim 29 requires the process to take place in a single vessel, as stated in the Office Action by the Examiner in making the double patenting rejection, and as stated in MPEP

2144.04 (V.) concerning the obviousness of making items integral or separable, claim 29 should be allowable for the same reasons as claim 1 of the '341 patent.

Claims 30 and 31 further modify the method of claim 29 by reciting that the step of cooling the bodies of meat comprises reducing the temperature of the bodies of meat to a temperature substantially below, and preferably 15°F to 40°F below, the elevated temperature.

### **CONCLUSION**

In light of the foregoing, the allowance of claims 1, 12-17, 20-24 and 26-31 is believed to be in order and is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it would help expedite the allowance of this application.

### **Request for Extension of Time**

Applicants request a three-month extension of time within which to respond to the Office Action. Authorization is given to charge payment in the amount of \$625 (\$555 for the three-month extension fee and \$70 for the terminal disclaimer) to Deposit Account No. 50-1170. Authorization is also given to charge any additional fees or credit any overpayment in connection with this or any future communication to the deposit account.

Respectfully submitted,



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